

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

OLDNAR CORPORATION, f/k/a/
NARTRON CORPORATION,
identified on initiating document as
Gen X Microsystems, Inc.,

Case No. 1:13-cv-1064

Plaintiff,

HON. JANET T. NEFF

v.

SANYO NORTH AMERICA
CORPORATION, et al.,

Defendants.

_____ /

ORDER

Pending before the Court is the parties' Joint Notice Regarding Recommendations for Further Proceedings on Remand (ECF No. 393). The Joint Notice reflects the parties' lack of agreement on any recommendations for proceeding despite the Sixth Circuit Court of Appeals' detailed and methodical consideration of the remaining issues to be determined on remand. Plaintiff sets forth 11 issues for decision, recommending full briefing by each side on the first 3 issues and a combined bench and jury trial on Issues 4-11. Defendants set forth two threshold issues for decision, one as to each Defendant, recommending briefing on Nartron's contract claim against Sanyo, and an evidentiary hearing and post hearing briefs on the issue of what "know-how" Nartron claims was shared with PNA (Panasonic North America) and deciding whether it is compensable under a theory of unjust enrichment. Defendants recommend any remaining claims be first addressed in mediation, and if necessary thereafter, that a trial be conducted.

The parties' failure to make any joint recommendations should not have been unexpected in this case. The parties continue to engage in a "scorched earth" strategy to see who can out last whom in this litigation. The parties' pretrial submissions are a point in fact, which, based on the number of witnesses and cross-objections, suggest the parties are not acting in good faith. As the Court noted at the final pretrial conference, the parties' conduct of this litigation can be described as "death by a thousand cuts" (ECF No. 318 at PageID.4472). The parties' filings and litigation conduct reflect that they have not pursued carefully evaluated positions.

Accordingly, having considered the Sixth Circuit's decision and the parties' separate statements of the issues in the Joint Notice, the Court determines that the threshold issue for decision is to determine what intellectual property/"know-how" Nartron alleges has been used without permission by Defendants. Nartron has the burden of proof on this issue and shall:

- (1) identify the intellectual property/"know-how"; and
- (2) show how the intellectual property/"know-how" was used

in the separate contexts of Nartron's remaining claims against Sanyo and Panasonic, i.e., on the contract under § 9.3 of the Development and Supply Agreement, and under a theory of unjust enrichment.

The Court will conduct an evidentiary hearing on these two questions. Each side will have two hours for presentation of evidence with no rebuttal. Given the parties' excessive pretrial submissions, there will be no motion practice prior to the hearing. Each party shall decide which witnesses are their strongest witnesses to present that party's case since, as noted above, there previously has been no attempt to focus on the appropriate questions for decision or carefully screen what witness testimony and evidence are necessary to present the party's argument.

Accordingly:

The parties shall carefully review the Sixth Circuit opinion and instructions on remand, *Oldnar Corp. v. Panasonic Corp. of N. Am.*, 766 F. App'x 255 (6th Cir. 2019), and shall:

(1) not later than **July 8, 2019**, file a revised Joint Statement of the Case and the Elements of the Claims (*see* ECF No. 272); and

(2) each file an evidentiary hearing brief (in the nature of a trial brief), not to exceed ten pages for each side, concisely detailing the parties' positions with respect to the questions above; Plaintiff's brief shall be filed not later than **July 2, 2019**; Defendants' brief shall be filed not later than **July 16, 2019**.

The parties shall appear for an **Evidentiary Hearing** on **August 13, 2019, 8:30 a.m.**, before the Honorable Janet T. Neff, 401 Federal Building, 110 Michigan, N.W., Grand Rapids, Michigan.

IT IS SO ORDERED.

Dated: June 14, 2019

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge